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International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues prior to submission of the fifth periodic report of the Netherlands**

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/NLD/CO/4). Please indicate which procedures are in place for the implementation of the Committee's Views under the Optional Protocol and for submitting follow-up reports thereon, and provide information on measures taken to ensure full compliance with each of the Views adopted in respect of the State party.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, including examples of cases in which the provisions of the Covenant have been referred to by national courts and other institutions responsible for applying the law.

B. Specific information on the implementation of articles 1-27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. In the light of the previous concluding observations (para. 4),[1] please indicate whether there has been any progress in withdrawing the reservation to article 10 of the Covenant and whether consideration has been given to withdrawing the State party's other reservations.

4. Please provide information on any progress made to establish a national human rights institution for Aruba and Curaçao, and respond to allegations that the national preventive mechanism established in 2011 lacks independence and suffers from efficiency problems.

* Reissued for technical reasons on 22 May 2017.

** Adopted by the Committee at its 119th session (6-29 March 2017).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.

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Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20 and 26)

5. Please clarify whether:

(a) The General Equal Treatment Act and the provisions of the Criminal Code that prohibit racism and racial discrimination effectively protect individuals discriminated against on grounds of language, ethnic origin and citizenship;

(b) Racist motivation constitutes a specific aggravating circumstance under criminal law;

(c) Measures have been taken to address the racial implications of "Black Pete" (*Zwarte Piet*) participating in the Sinterklaas festival.

6. Please respond to the following allegations and provide information on measures taken to address them effectively:

(a) People of African descent, including migrants and asylum seekers, experience racial discrimination in the European and Caribbean Netherlands;

(b) Hate crimes against people of African descent, Muslims, Jews and foreigners, including harassment, physical violence and hate speech, including in political discourse, by media outlets and in social media, that may amount to incitement to hatred, discrimination and violence. Please provide information on the number of hate crimes reported to the police and on the ensuing investigations and convictions. Please also report on measures taken to address racism in football stadiums, as well as racist bullying and ethnic segregation in schools.

7. Please respond to reports of ethnic profiling and widespread use of stop-and-search powers by law enforcement officials without a reasonable suspicion, particularly in the context of traffic control, identity and immigration stops, and preventive searches, and indicate whether data regarding the disproportionate targeting by the police of minority individuals need to be collected in order to qualify certain practices as unlawful profiling. Please also report on measures taken to address the racial disparities in the criminal justice system, including the reported disproportionate representation of people of African descent in the prison population.

8. In reference to the previous concluding observations (para. 19), please report on measures taken to:

(a) Address discrimination against ethnic minorities, including the Roma, Sinti and Travellers, in recruitment and selection practices in the public and private sectors;

(b) Increase the representation of people of African descent in politics, the administration of justice and police forces. Please also provide information on efforts made to facilitate integration of persons with disabilities in the job market. Please indicate whether steps have been taken to review the compatibility of the Civic Integration Abroad Act and its manner of application with the Covenant, particularly with regard to exceptions from taking the examination on the language and society of the Netherlands, and with regard to provisions of the Civic Integration Act providing for the issuance of fines and the withdrawal of or the refusal to extend temporary residence permits in cases of failure to pass the examination.

Violence against women, including domestic violence (arts. 2-3, 7 and 26)

9. Please respond to reports that domestic violence remains a problem, particularly in the municipalities of Bonaire, Sint Eustatius and Saba, and that domestic violence, rape and sexual harassment persist in Sint Maarten, Aruba and Curaçao. Please report on measures taken to prevent and combat such violence, to ensure proper risk assessment by the police and timely response to complaints, to guarantee the safety of all victims and their access to free legal aid, to ensure that local authorities provide adequate and sufficient support and rehabilitation services and safe shelters, including for undocumented women, and to effectively investigate and prosecute perpetrators.

Counter-terrorism measures (arts. 4, 7, 9-10, 14, 17-19 and 26)

10. Please explain the nature, extent and preconditions for the administrative control orders and travel bans issued pursuant to the Temporary Administrative (Counter-Terrorism) Measures Bill on individuals that can be associated with terrorist activities or support thereof. Please provide more information about the proposed amendments to the Nationality Act providing for the revocation in absentia of the Netherlands nationality of dual nationals on the basis of information that they had left the country to voluntarily "join" a foreign State's military service or a "terrorist organization". In particular, please address concerns about the prevalence in the proposed legislation of:

(a) Vague and broadly formulated provisions that restrict rights, without a criminal charge or prior judicial authorization, often on the basis of secret information;

(b) Insufficient fair trial guarantees and effective remedies;

(c) Perpetuation of stereotypes resulting in discrimination, hostility and stigmatization of certain groups such as Muslims, foreigners and migrants.

11. Please respond to concerns that the intelligence and security services bill does not provide for adequate safeguards against unnecessary and disproportionate interference with privacy in the context of online surveillance, including data mining and large-scale interception of bulk telecommunications data, hacking and file decryption by the intelligence services. Please indicate what institutional safeguards and notification procedures are envisioned under the new bill, and under what conditions, if at all, data can be shared with foreign intelligence services. Please also provide information on the operation of the @MIGO-BORAS surveillance system and on measures and safeguards put in place against unwarranted and excessive interference with the right privacy as well as steps taken to increase the system's transparency. Finally, please elaborate on the compatibility with article 17 of the Covenant of the draft law introducing blanket data retention powers for all telecommunication service providers.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6-7)

12. In reference to the previous concluding observations (para. 7), please report on any amendments to the legislation on termination of life and elaborate on the criteria for medical facilitation of termination of life, on the practice in applying the said criteria and the legal and institutional safeguards in place to verify that medical professionals are complying with the free, informed, explicit and unambiguous decision of their patients.

13. Please respond to reports that a large number of unaccompanied children left State-run asylum reception centres, including in 2011, and were unaccounted for, and report on measures taken to investigate such disappearances and bring those responsible to justice.

14. Please provide information on the laws governing access to abortion and on provision of information on sexual and reproductive options in Sint Maarten and in the Caribbean Netherlands.

Liberty and security of persons and treatment of persons deprived of their liberty (arts. 7 and 9-10)

15. Please respond to reports that the right of persons deprived of liberty, and not subject to the regime of section 62 (2) of the Code of Criminal Procedure, to notify someone of their detention is not always respected in practice and that some police officers believe that such a right does not apply to adult persons in custody. Please clarify:

(a) Whether section 62 (2) of the Code of Criminal Procedure has been amended to ensure that the exceptions to the right of notification of custody are clearly defined and time-limited;

(b) The role of lawyers during interrogations, reasons for their removal and the manner of remuneration of ex-officio lawyers participating in interrogations;

(c) Whether access to free legal aid is available for persons suspected of "C category offences";

(d) Whether legal representation of juveniles during interrogations is mandatory in all cases, both in law and in practice, and is not dependent on the seriousness of the criminal offence;

(e) How access to lawyers is guaranteed for detainees in Sint Eustatius and Saba (Caribbean Netherlands).

16. Please provide information on:

(a) Measures taken to reduce the use of pretrial detention, including of juveniles, and to ensure that it is applied only as a method of last resort;

(b) Whether judicial decisions ordering pretrial detention are properly reasoned and are based on an individualized determination of all the circumstances;

(c) The length of pretrial detention in Aruba and Curaçao;

(d) Efforts to increase resort to non-custodial alternatives, including in the case of juveniles, and provide statistical information on their application in practice. Please clarify whether, and under what conditions, pretrial detention of persons over 16 years old in police cells for up to 10 days continues, and provide an update on the status of the bill extending the grounds for pretrial detention for up to 17 days before a hearing takes place.

17. Please respond to the following concerns and report on measures taken to address them:

(a) The extensive application in practice of administrative detention of asylum seekers and immigrants without consideration of non-custodial alternatives;

(b) The lack of individualized determination of all the circumstances, including possible vulnerabilities, before ordering the detention of asylum seekers at the border;

(c) Cases of immigration detention exceeding the maximum time limit of 18 months under the directive of the European Parliament and the European Council on common standards and procedures in member States for returning illegally staying third-country nationals owing to the accumulation of periods of repeated detention;

(d) Significant delays in reviewing the lawfulness of an administrative immigration-related detention and the non-automatic nature of such judicial reviews;

(e) Reports of the extensive use of isolation and separation measures in immigration detention as a means of control and punishment that may amount to solitary confinement. Please also report on the status of the draft bill on return and alien detention and, if applicable, on any other proposed or newly adopted legislation regulating immigration detention and on its compatibility with the Covenant.

18. Please provide information on the progress made in establishing the review mechanism for life sentences following the Supreme Court's judgment of 5 July 2016 and on its implementation in practice, and clarify whether the review offers real prospects of early release for prisoners serving life sentences.

19. Please respond to reports that minors and young people have been committed to closed care facilities for juveniles without judicial authorization or judicial review, and explain the situation in law and in practice of minors with Netherlands citizenship whose undocumented parents are detained in restricted family centres for rejected asylum seekers.

20. Please clarify whether the practice of involving police officers or private security guards in dealing with agitated patients in psychiatric establishments has been abolished. Please also respond to concerns that some patients placed voluntarily in psychiatric institutions are held under a so-called closed ward regime, de facto depriving them of their liberty, without the legal safeguards attached to the involuntary placement procedure. Finally, please report on measures taken to reduce isolation measures in residential care facilities, including for long periods, on the use of restraint belts (*onrustbanden*) and on the practice of locking up patients in their rooms.

21. Please clarify whether the use of fixation beds in prisons has been discontinued and whether disciplinary procedures, including disciplinary confinement, continue to be widely used at the Zuyder Bos Prison. Please also report on measures taken:

(a) To improve detention conditions at Alkmaar police station in the Netherlands, the Philipsburg police station in Sint Maarten, the Rio Canario police station in Curaçao, the correctional institution in Aruba and Block 1 of the Centre for Correction and Detention in Curaçao, and to combat overcrowding at Point Blanche prison in Sint Maarten;

(b) To address instances of ill-treatment and inter-prisoner violence in the correctional institution in Aruba, the Centre for Correction and Detention in Curaçao and the Point Blanche prison in Sint Maarten;

(c) To increase the presence of general practitioners in prison establishments, and of a psychiatrist at Krimpen aan den IJssel prison particularly;

(d) To ensure appropriate health care for drug-dependent inmates, including sufficient substitution programmes.

Elimination of slavery, servitude and trafficking in persons (art. 8)

22. Please report on measures taken to address:

(a) Labour exploitation of migrant workers, particularly Polish and other Eastern Europeans migrants, including underpayment, unsafe and poor working conditions, excessive working hours and sexual exploitation;

(b) Concerns about underreporting of trafficking in persons, especially involving minors and foreigners;

(c) Allegations of child labour, in particular in hotels, restaurants, supermarkets and the agricultural sector. Please also report on the application of the new Due Diligence Child Labour Law.

Freedom of movement (arts. 12 and 26)

23. In reference to the previous concluding observations (para. 18), please respond to concerns that the amended Urban Areas (Special Measures) Act, which allows for screening of persons on possible antisocial or criminal behaviour based on police records, does not provide for a sufficiently clear and well-defined legal basis, restricts the right of individuals to choose one's residence and protect one's privacy, and may discriminate against individuals with low income. Please also report on the status of legislative proposals aimed at making the freedom of movement of nationals of the Netherlands born in Aruba, Curaçao and Sint Maarten to the Netherlands subject to settlement requirements and on the conformity of such proposals with the Covenant.

Treatment of aliens, including refugees and asylum seekers (arts. 7 and 13)

24. Please report on measures taken to:

(a) Prevent excessive delays in processing family reunification claims;

(b) Combat harassment, threats, discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons, asylum seekers or refugees in reception facilities, and ensure the effective investigation and prosecution of those responsible for such acts;

(c) Strengthen asylum procedures in the Caribbean Netherlands and introduce legislation or regulations governing asylum in Aruba, Curaçao and Sint Maarten. Please also respond to allegations that asylum applications in the "accelerated track" of individuals from countries with a high acceptance rate (such as Eritrea and the Syrian Arab Republic) are mostly processed during the eight-day general asylum procedure and are thus assessed in a rushed manner, without proper access to legal assistance, and may result in an increased risk of refoulement, which is prohibited. Please provide information on the process for determining what constitutes "safe third countries", the procedures that apply for the removal of individuals to those countries and safeguards available for individuals

designated for removal to those countries. Please also indicate what form of assistance and support is provided to those whose application for asylum has been rejected.

Access to justice and fair trial (arts. 2, 14 and 24)

25. Please report on measures taken to ensure adequate access to legal aid in the light of recent budget cuts, including on accessible free legal advice in the Caribbean Netherlands. Please comment on reports that a large number of cases under the so-called "ZSM procedure" are decided upon by the public prosecutor rather than a judge, and provide information on the measures taken to ensure that suspects in the procedure enjoy, in practice, the right to legal assistance.

26. Please clarify whether the practice of testing the DNA of children in conflict with the law and whether the legal provisions that allow children of 16 and 17 years of age to be prosecuted under adult criminal law, to be placed in institutions as a treatment measure and to be detained in adult penitentiary institutions have been reviewed.

Right to privacy (art. 17)

27. Please address the allegation that the draft act on market health care would allow medical insurance companies to consult individual records in the electronic patient registration without prior consent from the patient.

Freedom of religion (art. 18)

28. Please provide information on the status of the pending bill outlawing the wearing of face-covering clothing in public places and provide an explanation on its compatibility with the Covenant.

Peaceful assembly (art. 21)

29. Please respond to concerns that the Public Assemblies Act and its application in practice by local authorities gives rise to undue restrictions on the right to peaceful assembly, and to reports of interference with peaceful demonstrations, such as abuse of emergency orders, bans on assemblies at particular locations, excessive use of force by police, unlawful detention of peaceful protesters, confiscation of banners and use of photographic and video surveillance and identity checks, including during demonstrations against the figure of "Black Pete" in Rotterdam on 12 November 2016.

Rights of the child (arts. 7, 24 and 26)

30. In reference to the previous concluding observations (para. 17), please report on measures taken to address child abuse, including domestic violence and sexual abuse of children in residential institutions and foster care, to provide prompt and adequate specialized care to child victims, and to explicitly prohibit corporal punishment in all settings, including in the home, in Aruba, Bonaire, Sint Eustatius and Saba.